

December 11, 2003

Via Hand Delivery

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Petition for Declaratory Ruling that pulver.com's Free World Dialup
is neither Telecommunications nor a Telecommunications Service
WC Docket No. 03-45**

Dear Ms. Dortch:

In response to a request from Commission staff, pulver.com files this letter to supplement the record. As requested, this letter responds to the description of Free World Dialup ("FWD") offered in the Reply Comments of the Electronic Frontier Foundation ("EFF"), clarifies the extent of FWD's use of telecommunications, and provides additional legal analysis in support of the requested relief.

As described in the above-referenced petition, FWD is a Session Initiation Protocol ("SIP")-based peer-to-peer service whereby the SIP phones purchased and owned by registered subscribers establish voice communications directly with each other via IP.¹ FWD does not provide either customer premises equipment ("CPE") or broadband connectivity to registered users.² Due to the open nature of FWD, third parties can provide FWD subscribers with connectivity to the public switched telephone network ("PSTN") without permission from, or compensation to, pulver.com.

¹ Petition at 3.

² *Id.* at 3, 6-7; Reply Comments of Electronic Frontier Foundation at 2, WC Docket No. 03-45 (April 1, 2003).

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FWD is best thought of as a kind of directory or translation service, as explained in the Reply Comments of the Electronic Frontier Foundation (“EFF”).³ EFF’s Reply Comments accurately describe FWD as it is currently available, subject to the following clarifications. First, EFF’s description of FWD registration should be supplemented to account for the ability of FWD subscribers to route calls to voice mail. When registration is not renewed by the SIP User Agent, or end-point, FWD will consider the subscriber not to be present. In that case, if a subscriber has opted-in to FWD’s voice-mail service the FWD voice-mail agent will accept the call; otherwise, the caller is informed that the intended party is not available.⁴ Second, EFF’s statement that FWD “does not handle the actual media stream at all” is accurate in most, but not all, circumstances.⁵ In those instances in which a user’s home networking equipment generates a private Internet address that interferes with direct communications and that user’s CPE is unable to determine the proper public Internet addresses, FWD repairs the addressing information and relays the signaling and media stream via a protocol conversion solution to facilitate delivery. In addition, when users call voice-mail or reach service announcements (e.g., “The user is unavailable”), FWD plays or records the media. Third, all FWD calls are managed by the SIP User Agent (i.e., users), not FWD. To the extent FWD “sends” messages, such as a “sip bye” message, it is merely relaying the message originated by the end-point. FWD does not originate that message itself.⁶

Because FWD calls are managed by end-points, SBC Communications, Inc. (“SBC”) is wrong to claim that FWD “actually establishes the connection and manages the calling between FWD members” or that FWD incorporates the transmission components of broadband service into an end-to-end service.⁷ Much like a directory service, FWD provides information that allows a connection to be established between end-points. While FWD facilitates the location of and communication between end-points, the end-user devices establish the actual connection and manage the call. As EFF correctly points out, “FWD simply allows FWD subscribers to use telephone-like 5- or 6-

³ Reply Comments of EFF at 4.

⁴ See EFF Reply Comments at 2. EFF accurately described the registration process as it existed in early 2003, prior to FWD’s introduction of voice.

⁵ *Id.* at 3; see also EFF Reply Comments at 5 (FWD “does not even transmit the data that constitutes the VoIP call.”).

⁶ *Id.* at 3.

⁷ Opposition of SBC Communications, Inc. at 3 (March 14, 2003).

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digit numbers to locate and call other FWD subscribers, much as DNS translation allows Internet users to use <http://www.eff.org> instead of <http://209.237.229.14>.”⁸

SBC observes that pulver.com obtains “transmission between its SIP server and the Internet from a third-party Internet service provider.”⁹ The observation is not significant for the purposes of the petition. The fact that there is some transmission involved in the provision of FWD does not mean that FWD itself provides transmission, as SBC appears to suggest. The notion that “using” transmission necessarily implies “providing” transmission is inconsistent with federal law and negates the category of information services, which are provided “via telecommunications.”¹⁰ SBC’s overly expansive view would deem each of the various Internet products identified as analogous to FWD – data name server (“DNS”) translation services, instant messaging (“IM”) and Google and other search engines – as “telecommunications” or “telecommunications services” because they, too, use transmission capabilities.

As explained in the petition and generally agreed upon by commenters, FWD does not offer pure transmission to its registered subscribers and thus falls outside the definitions of telecommunications and telecommunications service.¹¹ The subscribers’ transmission capability is provided by their broadband providers; FWD is merely an Internet application that may be accessed using that broadband service. The possibility that FWD subscribers may obtain PSTN connectivity through a third-party provider is irrelevant as that connectivity is not provided by FWD and is a matter beyond pulver.com’s control.

FWD also appears to fall outside the definition of an information service. As construed by the Commission in its 1998 *Report to Congress*, the information service classification applies only to those entities offering a service that combines data transport

⁸ EFF Reply Comments at 7.

⁹ SBC Opposition at 3.

¹⁰ 47 U.S.C. § 153(20) (information service is provided “via telecommunications”) and (46).

¹¹ See, e.g., Comments of Cisco Systems, Inc. at 2 (March 14, 2003); Comments of Global Crossing North America, Inc. at 2 (March 14, 2003); Comments of International Softswitch Consortium at 3 (March 14, 2003) (finding conclusion “inescapable”); Comments of Qwest Communications International, Inc. at 5-6 (FWD is an information service); Comments of the VON Coalition at 1 (March 14, 2003); Comments of WorldCom, Inc. at 2 (March 14, 2003) (the Commission has never before found that an Internet application is subject to regulation).

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and computing capabilities.¹² FWD offers only computing capabilities. Transport is furnished by the registered user's broadband provider, not FWD. Because FWD lacks the requisite transmission component, the information service classification appears inappropriate. Consequently, the petition merely requests that the Commission clarify pulver.com's regulatory responsibilities by declaring that FWD is neither telecommunications nor a telecommunications service; it does not seek an affirmative ruling that FWD is an information service.

Please direct any questions regarding this matter to the undersigned.

Sincerely,



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cc: Jeffrey Carlisle
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Julie Veach
Thomas Navin
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¹² See, *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 at ¶ 39 (1998); see also Petition at n.9.